

135162

PHILADELPHIA
LOS ANGELES
MIAMI
HARRISBURG

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102
TELEPHONE (717) 838-1787

WASHINGTON
NEW YORK
SAN DIEGO
LONDON

BRIAN J. CLARK
DIAL DIRECT (717) 838-1718

November 14, 1989

Harry T. Daw [3HW33]
Enforcement Project Manager
Enforcement and Title III Section
Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107

Re: Avtex Performance of Section 106 CERCLA Orders

Dear Mr. Daw:

On Thursday, November 9, 1989, the Virginia Water Control Board adopted an Order withdrawing the NPDES permit authorizing discharges of waste water from the Front Royal facility of Avtex Fibers-Front Royal, Inc. This ruling deprived Avtex of authority to discharge treated waste from the facilities, and has resulted in a shutdown of operations at the plant. Avtex representatives informed you orally of the significance of this ruling on Friday, November 10, 1989. The purpose of this letter is to confirm that advice in writing.

Withdrawal of authority to discharge from the plant will prevent Avtex from carrying out its obligations under the orders of your Agency issued under the Comprehensive Environmental Response Compensation & Liability Act, Section 106, dated June 30, 1989 and October 31, 1989. Specifically, Avtex is unable to treat and dispose of carbon disulfide and other groundwater contaminants as contemplated in the first of these two orders. Avtex is not able to carry out remediation of PCB problems under the second order, because of the virtual inevitability of some discharge of industrial contaminants in the course of those operations.

Avtex took every available step before the Virginia Water Control Board, and sought an appeal and stay of the Board Order in the Virginia Circuit Court, to no avail. Avtex also sought authority and direction from your Agency in the hope of achieving an environmentally sound phased closure of this facility. These efforts were not successful.

Please accept this letter as confirmatory notice of the force majeure described above. Based on present

101772

MORGAN, LEWIS & BOCKIUS

Harry T. Daw
November 14, 1989
Page 2

circumstances, we cannot predict any time within which this condition can be overcome by Avtex.

If you require further information, please call me.

Yours truly,


Brian J. Clark

BJC/tb

cc: Neil G. Epstein, Esq.
R. H. Hughes

101773